IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2252 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHVIDYANAGAR COMMERCIAL COOPERATIVE BANK LIMITED

Versus

CHIMANBHAI MOTIBHAI PATEL

Appearance:

MR. S.B. VAKIL WITH MR. MR SHIRISH JOSHI for Petitioner No. 1

MR. N.D. NANAVATI, LD. SR. COUNSEL WITH MR PRADEEP PATEL for Respondent No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 19/09/2001

C.A.V. JUDGEMENT

Shree Vallabh Vidyanagar Commercial Co-operative Bank Limited-petitioner has filed this petition for a writ of mandamus or a writ in the nature of mandamus or

any other appropriate writ quashing and setting aside the order dated 24.3.2001 passed by the Gujarat State Co-operative Tribunal below application for interim relief. The Tribunal by its interim order rejected Exhs. 4 and 11 regarding interim injunction application and further directed to hear the matter on merits.

2.1 The facts giving rise to this petition are as under:

2.2 The petitioner is a Co-operative Society and a Co-operative bank registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as `the Act') and the Rules framed thereunder. The petitioner is also a Co-operative Bank governed under the Act as well as the Banking Regulation Act. Chimanbhai Motibhai Patel-respondent No. 1 was the Director and Bhurabhai Varshrambhai Aiyar-respondent No. 2 was the Managing Director of the petitioner-Bank till February 5, 2001 on which date, it was declared that they were ceased to be Directors of the petitioner-Bank because they were defaulters.

2.3 The bye-laws of the petitioner-Bank provides for constitution of the Board of Directors of the petitioner-Bank as also the post of Managing Director. They are governed under the provisions of the Act, the Rules and the bye-laws. The bye-law No. 31 provides for the Board of Directors who are elected for a term of three years. There are 11 Directors. Disqualification of Directors is provided in bye-law 35 and sub-clause (iv) thereof provides that, if one is defaulter as loanee or surety of a loanee, he would not be qualified to remain as Director. Bye-law No. 36 provides for automatic cessation of the post of Director, if the contingency as provided in the said bye-law No. 36 happens. If one is defaulter in making payment of instalment, interest over instalment etc. as loanee or where he is surety the main loanee commits such default, the office of the Director would automatically become vacant on such Director ceases to be Director.

2.4 Respondent Nos. 1 and 2 have committed default in payment of loan which they have received. The District Registrar, Co-operative Societies, who is an independent authority and looking after the co-operatives in Anand District, had paid a visit to the petitioner-Bank. He examined the accounts and directed the petitioner-Bank to take action under the bye-law and ultimately on 5.2.2001, a formal Resolution came to be passed by the Board of Directors which was not necessary in view of the provisions of bye-law No. 36

3. Being aggrieved and dissatisfied with the aforesaid decision, Lavad Case No. 264 of 2001 was jointly filed by the respondents before the Board of Nominees, Anand. In that case application Exh. 4 was filed for interim injunction. They had also made a prayer for quashing the Resolution in question.

4. Pending the aforesaid proceedings, on 14.2.2001, application Exh. 11 came to be filed before the Board of Nominees wherein it is prayed by the respondents that pending hearing and final disposal of Lavad Case No. 264 of 2001, the respondents be reinstated to the posts of Director and Managing Director by a mandatory injunction.

5. The petitioner bank had filed its reply in the said Lavad Case and ultimately the Board of Nominees by order dated 12.3.2001 dismissed both the applications Exh. 4 and Exh. 11.

6. Being aggrieved and dissatisfied with the aforesaid order, the respondents filed Revision Application before the Gujarat State Co-operative Tribunal as late as 24.3.2001. The Tribunal without issuing notice to the petitioner granted mandatory injunction as prayed for in paragraph 2(A) and 2(b) of the application for interim relief. The said order was passed on 24.3.2001.

7. Being aggrieved and dissatisfied with the aforesaid interim order of the Tribunal, the bank filed the present petition before this court on 29.3.2001. During the pendency of the petition the Tribunal heard and decided revision application No. 143 of 2001 and ultimately passed fresh order on 10.4.2001 rejecting the revision application which was against the respondents for which they have filed Special Civil Application No. 2787 of 2001. By my separate judgement I have rejected Special Civil Application No. 2787 of 2001. In view of the same, there is no need to pass any further order in this matter. This petition stands disposed of accordingly. No order as to costs.

(K.M. MEHTA, J)

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